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09/581,397	10/02/2000	Lars Eric Sundstrom	MAR37P-314	9763

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

8/17

**Notification of Non-Compliance
With 37 CFR 1.192(c)**

Application No.

09/581,397

Applicant(s)

SUNDSTROM ET AL.

Examiner

David Lukton

Art Unit

1653

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 27 February 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☒ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☒ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☐ Other (including any explanation in support of the above items):

see accompanying sheets.


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The brief includes a statement that claims {1, 2, 8} and {5, 6, 19-24} do not stand or fall together, but fails to present reasons in support thereof as required under 37 CFR 1.192(c)(7). MPEP §1206.

Further, the Brief (filed 2/27/04) does not argue the rejections of claims 5, 6, 19-24 separately from the rejections of claims 1, 2 and 8. The Brief argues (page 15) that claims 5, 6, 19-24 are patentable for the reasons given in the traversal of the rejections of claims 5, 6, 19-24. However, the issues are not the same for claims 5, 6, 19-24 as they are for claims 1, 2 and 8. A key argument in the Brief is that the compounds defined in claims 1, 2 and 8 are novel because these claims require the level of contaminants to be less than 1%, and in the prior art disclosure (it is argued), the level of contaminants is greater than 1%. However, none of claims 5, 6, 19-24 impose any limitations on the amount of contaminants. For example, claim 19 would encompass a composition which contains a 1:1 mixture of compounds, one of which has the D-configuration (at the carbon marked with an asterisk), and one of which has the L-configuration. If it is possible to interpret the disclosure of Cherksey ('947) as permitting a mixture of D- and L-amino acids (e.g., compound "R", column 9 of Cherksey), rather than requiring just the "L" configuration, then claim 19 (for example) is not distinguished on the basis of stereochemistry. In sum, the brief does not acknowledge that claims 5, 6, 19-24 can include mixtures of compounds

(stereoisomers or unrelated compounds), and makes no argument one way or another with respect to this fact.




Appellant is required to comply with provisions of 37 CFR 1.192(c). To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 1.192(c) within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can be reached at 571-272-0951. The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

 4/21/04